

1999 ANNUAL REPORT
INDIANA JUDICIAL NOMINATING COMMISSION
COMMISSION ON JUDICIAL QUALIFICATIONS

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The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. Also, the Nominating Commission certifies former judges as Senior Judges to help Indiana courts with their demanding caseloads.

The Qualifications Commission investigates allegations of ethical misconduct against Indiana judges, judicial officers, and candidates for judicial office, and, when appropriate, prosecutes misconduct cases which ultimately are resolved by the Supreme Court. Additionally, the Commission or its staff offers informal or written advisory opinions about judicial ethics.

The Chief Justice of Indiana, the Honorable Randall T. Shepard, is the *ex officio* Chairman of the Commission. Other Commission members serving in 1999 were Charles Berger, Esq., Evansville; Linda K. Henderson, Bedford; Karl Mulvaney, Esq., Indianapolis; Benton Marks, Indianapolis; Daniel Roby, Esq., Fort Wayne; and Anne Faherty, South Bend. In 1999, the Commission convened in Indianapolis on ten occasions.

Two appellate court vacancies occurred in 1999. In September, the Commission interviewed the twenty-five applicants, then six semi-finalists, for the vacancy on the Indiana Supreme Court which was created by the resignation of Justice Myra Selby. The Commission nominated

Judge Robert D. Rucker, Indiana Court of Appeals; Judge Nancy H. Vaidik, Porter Superior Court 4; and Indianapolis attorney Mary Beth Ramey. Governor O'Bannon appointed the Honorable Robert D. Rucker to the Supreme Court in October.

In December, the Commission interviewed the fourteen applicants, then six semi-finalists, for the Third District Court of Appeals vacancy which was created by Justice Rucker's elevation to the Supreme Court. The Commission nominated South Bend attorney Michael P. Barnes; Judge David P. Matsey, Starke Circuit Court; and Judge Nancy H. Vaidik, Porter Superior Court 4. In January, 2000, the Governor appointed Judge Nancy H. Vaidik to the Court of Appeals.

Also in 1999, the Nominating Commission certified six former judges as Senior Judges, and recertified sixty-three Senior Judges.

In 1999, the Judicial Qualifications Commission docketed one hundred ninety-five complaints or allegations of judicial misconduct. One hundred forty-three complaints, or about seventy-three percent, were summarily dismissed as not raising well-founded issues of ethical misconduct or as outside the Commission's purview. Additionally, thirty-five investigations were resolved in 1999. Nine ultimately were dismissed with findings of no misconduct, including one which was referred to the Judicial Ethics Committee of the Judicial Conference of Indiana. In twenty-one instances, judges received private cautions or directives from the Commission; five of those cases were dismissed without prejudice. In two instances, the Commission and the judges agreed to the issuance by the Commission of Public Admonitions in lieu of formal disciplinary proceedings. *Admonition of the Honorable James Funke, Jr., Jennings Superior Court*, issued July 8, 1999; *Admonition of the Honorable Fredrick R. Spencer, Madison Circuit Court*, issued December 28, 1999. The Commission filed formal disciplinary charges in two cases in 1999, which resulted in the Supreme Court's imposition of one Public Reprimand, *Matter of Johnson*, 715 N.E.2d 370 (Ind. 1999), and one three-day suspension without pay, *Matter of Jacobi*, 715 N.E.2d 873 (Ind. 1999). Finally, in 1999, the Supreme

Court issued its opinion in *Matter of Bybee*, 716 N.E.2d 957 (Ind. 1999), in which the Court imposed a Public Reprimand. Seventeen investigations were pending at the end of the year.

Throughout 1999, the Commission and its counsel were available to judges and candidates to help them resolve their ethical dilemmas. Counsel responded to over three hundred requests for advice from judges and judicial candidates. She participated in panel discussions about judicial ethics, and represented the Commission at the annual meeting of the Association of Judicial Disciplinary Counsel.